

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LORIE DUFF)	
)	
PLAINTIFF)	
)	
v.)	CIVIL ACTION NO. 4:20-CV-03430
)	
FRONTIER AIRLINES, INC. AND ABM)	JURY DEMANDED
AVIATION, INC.)	
)	
DEFENDANTS)	

**PLAINTIFF’S UNOPPOSED MOTION PURSUANT TO FRCP 60(a)
TO CORRECT AND/OR MODIFY THE COURT’S ORDER OF JUNE 29, 2022
(DOC. NO. 56), OR IN THE ALTERNATIVE, MOTION TO REOPEN CASE**

TO THE HONORABLE JUDGE OF THE COURT:

COMES NOW, LORI DUFF (“Plaintiff”) requesting the Court to Correct and/or Modify its Order dated June 29, 2022 (Doc. No. 56) pursuant to FRCP 60(a), or in the alternative, reopen the case, and for cause would show as follows:

I. Introduction

1. Plaintiff brought a claim for personal injuries against Frontier Airlines, Inc., ABM Aviation, Inc. and DAL Global Services, LLC. Based upon settlements reached between Plaintiff and Defendants Frontier and DAL Global, the Hon. Magistrate Yvonne Y. Ho issued a memorandum and recommendation (Doc. 55) to dismiss said Defendants.
2. On June 29, 2022, the Court issued its Order (Doc. 56) that adopted the Magistrate’s recommendations, and granted the pending motions to dismiss (Doc. 33, Doc. 47 and Doc. 41).
3. However, the Court concluded the Order (Doc. 56) with the statement “This case is hereby DISMISSED.” Plaintiff asserts that this statement in the Order is incorrect, and has resulted

in the Clerk closing the case in error. Specifically, the claims asserted by Plaintiff against Defendant ABM Aviation, Inc. have not been settled, nor have they been the subject of any motion to dismiss. As such, the claims against ABM Aviation, Inc. by Plaintiff are still pending before the Court without any determination.

4. The addition of the line “This case is hereby DISMISSED” appears to be a clerical error, oversight and/or omission subject to correct under FRCP 60(a), and as such Plaintiff requests the Court correct the Order (Doc. 56), and reopen the case, or in the alternative reopen the case under the principles of equity as the claims between Plaintiff and ABM Aviation, Inc. have yet to be decided and were never determined on the merits.

II. Arguments

5. Orders can be corrected under Rule 60(a) of the FRCP by the Court on its own, or on the motion of a party. Corrections under Rule 60(a) “finds application where the record makes apparent that the court intended one thing but by merely clerical mistake or oversight did another.” *Rivera v. PNS Stores*, 647 F.3d 188, 193094 (5th Cir. 2011).
6. The claims asserted by Plaintiff against ABM Aviation, Inc. were not the subject of any of the motions to dismiss that were the subject of the Magistrate’s Recommendations (Doc. 55). Nor have the claims by Plaintiff against ABM Aviation, Inc. been settled or the subject of any other dispositive motion to date. As such, the inclusion of the phrase “This case is hereby DISMISSED” appears to be a mistake that is the result of a clerical error, oversight or omission. FRCP 60(a).
7. Alternatively, Plaintiff would request that the Court amend and/or modify the Order (Doc. 56) and reopen the case under equitable principles to allow for a final resolution of the claims asserted by Plaintiff against ABM Aviation, Inc.

8. Counsel for Plaintiff and Defendant consulted regarding this motion on July 6, 2022 and Counsel for Defendant indicated Defendant is unopposed to the granting of this motion.

III. Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that the Court grant this unopposed motion to Correct and/or Modify the Court's Order dated June 29, 2022 (Doc. No. 56) pursuant to FRCP 60(a), and/or in the alternative, reopen the case to allow for the resolution of the remaining claims, and further requests all other relief at law or equity for which Plaintiff may show herself entitled.

Respectfully Submitted,

THE FORSBERG LAW FIRM, P.C.

BY: /s/ Kevin Forsberg
KEVIN A. FORSBERG
State Bar No.: 24009204
15899 Hwy 105 W
Montgomery, Texas 77356
936-588-6226
936-588-6229 Facsimile
Kevin@forsberglaw.net

CERTIFICATE OF SERVICE

This is to certify that on July 6, 2022, a true and correct copy of the foregoing documents was served by efileing on:

Marc Michael Rose
Rose Law Group PLLC
State Bar No. 24098350
Fed. Id. No. 2943701
777 Main Street, Suite 600
Ft. Worth, Texas 76102
Telephone: (817) 887-8118
Facsimile: (817) 887-8001
E-mail: marc@roselg.com

And

Brenton J. Allison
Gilman & Allison LLP
2005 Cullen Blvd.
Pearland, Texas 77581
Telephone: (713) 224-6622
Facsimile: (866) 543-3643
E-mail: ballison@gilmanallison.com C
COUNSEL FOR DEFENDANT ABM AVIATION, INC.

_____/s/ Kevin A. Forsberg_____
KEVIN A. FORSBERG